

RESOLUTION NO. 07 -15

Whereas, the United States Surgeon General finds: “Today, massive and conclusive scientific evidence documents adverse effects of involuntary smoking on children and adults, including cancer and cardiovascular diseases in adults, and adverse respiratory effects in both children and adults” and “exposure to secondhand smoke remains an alarming public health hazard” and “more than 126 million nonsmokers are still exposed;” and

Whereas, numerous nationally recognized medical and scientific authorities, including the American Medical Association, the Surgeon General, the National Institute on Occupational Safety and Health, the National Cancer Institute, the Environmental Protection Agency, the National Academy of Sciences, the National Toxicology Program, and the World Health Organization have issued reports and health advisories addressing the adverse effects of exposure to secondhand smoke; and

Whereas, secondhand smoke is a significant air pollutant that causes heart disease, lung cancer, respiratory infections, decreased respiratory function, and other health problems for smokers and nonsmokers; and

Whereas, it is estimated that between 24,300 and 71,900 low birth-weight or pre-term deliveries, about 202,300 episodes of childhood asthma (new cases and exacerbations), between 150,000 and 300,000 cases of lower respiratory illness in children, and about 789,700 cases of middle ear infections in children occur in the United States each year as a result of exposure to secondhand smoke; and

Whereas, it is estimated that in the United States, secondhand smoke causes about 46,000 (a range of 22,700 to 69,600) deaths from cardiac-related illnesses per year (including 700 to 1,240 deaths among Minnesotans), and 3,400 deaths from lung cancer; and

Whereas, there is no known safe level of exposure to secondhand smoke and neither the separation of smokers and nonsmokers nor the introduction of new ventilation systems can eliminate the health hazards it causes; and

Whereas, objective evidence does not support fears that restricting smoking in enclosed, indoor areas will harm a community’s economy; and

Whereas, owners of public workplaces are not authorized by law or constitution to expose their employees and customers to airborne toxins, such as those found in secondhand smoke, and employees also are not authorized by law or constitution to smoke in the workplace; and

Whereas, restricting smoking in public places and places of work can help to reduce youth exposure to secondhand smoke and to model smoke-free behavior; and

Whereas, an August 2006 survey of our community’s adult residents shows that about 80% of the respondents support smoke-free indoor workplace policies, comparable to the results of other recent surveys in Minnesota and across this nation; and

Whereas, the Community Health Services Advisory Board, which advises and assists the Olmsted County Board with its public health and safety policy responsibilities, have requested that the Olmsted County Board of Commissioners “take action leading to establishment of a smoke-free public and indoor work-site ordinance that effectively reduces exposure of workers in Olmsted County to environmental tobacco smoke;” and

Whereas, public health policies, ordinances, and other laws are part of the system by which people learn behaviors, guide youth, reduce health threats, and reinforce community norms that support the public's health; and

Whereas, the Olmsted County Board of Commissioners is also this County's Board of Health; and

Whereas, Minnesota Statutes, Chapter 145A Sections 145.04 and 145A.05 of the Local Public Health Act, establish the powers and duties of a Board of Health to: a) Adopt ordinances to regulate actual or potential threats to the public health; b) define public health nuisances; and c) provide for their prevention; and

Whereas, due public notice has been provided, public informational meetings have been held, and a public hearing was conducted by the Olmsted County Board of Commissioners on January 23, 2007, pursuant to Minnesota Statute 375.51;

NOW, THEREFORE, BE IT RESOLVED that the Olmsted County Board of Commissioners acting also as the Community Health Board for Olmsted County adopts the "Olmsted County Smoke-Free Workplace Ordinance", as on file in the County Administrator's office, on this 23rd day, of January, 2007

Dated: January 23, 2007

BOARD OF COUNTY COMMISSIONERS

James V. Bier, Chairperson

ATTEST:

Richard G. Devlin, Clerk-Administrator

RESOLUTION NO. 07-15

The County Board of the County of Olmsted, Minnesota, ordains:

SECTION A. Title:

This Ordinance shall be known and referenced as the Olmsted County Smoke-Free Workplace Ordinance.

SECTION B. Purpose and Jurisdiction:

- Subd. 1.** The purpose of this Ordinance is to protect the health, safety and welfare of the people of Olmsted County from the adverse effects of secondhand smoke by better ensuring their ability to breathe air that is uncontaminated by secondhand smoke; to affirm that the right to breathe has priority over allowing people to smoke; and to protect vulnerable populations, including employees, children, the elderly, and those with chronic health conditions from the adverse effects of secondhand smoke, pursuant to the powers granted under Minnesota Statutes, Chapters 145A and 375.
- Subd. 2.** As provided in Minnesota Statutes §145A.05, this Ordinance applies throughout all of Olmsted County, including the municipalities therein.
- Subd. 3.** As provided in Minnesota Statutes §145A.04, the Community Health Board is authorized to enforce laws, regulations, and ordinances within its jurisdictional area.
- Subd. 4.** Nothing in this Ordinance shall prevent other local levels of government within Olmsted County from adopting more restrictive measures to protect citizens from secondhand smoke.

SECTION C. Definitions:

- Subd. 1.** Definitions in this Ordinance shall pertain only to this Ordinance and shall have the meanings stated herein.
- Subd. 2. Food Establishment.** “Food Establishment” means any establishment, however designated, engaged in the preparation or serving of food or beverages for consumption either on or off the premises, or anywhere consumption of food occurs on the premises. This term includes any establishment that has an on-sale non-intoxicating malt liquor license, an on-sale intoxicating liquor license, an on-sale wine license, and/or a strong beer liquor license issued by the State of Minnesota, the municipality within which it is located, or Olmsted County.
- Subd. 3. Other Person in Charge.** “Other Person in Charge” means the agent of the Proprietor authorized to provide administrative direction to, and general supervision of, the activities within a public place or place of work at any given time.

- Subd. 4. Place of Work.** “Place of Work” means any enclosed, indoor location at which two or more individuals perform any type of a service for consideration of payment under any type of contractual relationship including, but not limited to, an employment relationship with or for a private corporation, partnership, individual, or government agency. This term includes any location where two or more individuals gratuitously perform services for which individuals are ordinarily paid. Examples of a place of work include enclosed, indoor areas of an office, a factory, a hotel or motel, a vehicle, a warehouse, and other locations where services are performed under an employment relationship. Enclosed, indoor areas of a private clubs and rooms used for private meetings or social functions are “places of work” if two or more persons acting under an employment relationship provide cleaning, catering, food or beverage service, maintenance, or other support services in such locations.
- Subd. 5. Proprietor.** “Proprietor” means the party who ultimately controls, governs, or directs the activities within the public place or place of work, regardless of whether the party is owner or lessee of the public place or place of work. The term “proprietor” may apply to a corporation as well as an individual.
- Subd. 6. Public Place.** “Public Place” means any enclosed, indoor area used by the general public or serving as a place of work including, but not limited to, arenas, auditoriums, bars, bowling alleys, bingo halls, commercial establishments, educational facilities other than public schools, as defined in Minnesota Statutes §120A.05, subdivisions 9, 11, and 13, hospitals, offices and other commercial establishments, pool halls, public conveyances, restaurants, retail stores, and common areas of rental apartment buildings. This term includes taxis, limousines, and other for-hire vehicles used to transport the public during hours of operation. “Public Place” also means an outdoor area of a public recreation center or public park, including, but not limited to, a public playground, swimming pool or other recreational area when in use by youth under the age of eighteen.
- Subd. 7. Smoking.** “Smoking” means inhaling or exhaling smoke from any lighted cigar, cigarette, pipe, or any other lighted tobacco or plant product. Smoking includes possessing or carrying a lighted cigar, cigarette, pipe or any other lighted tobacco or plant product intended for inhalation. The term “smoking” does not include the use of tobacco by an enrolled member of a federally-recognized Indian tribe as part of a traditional Indian spiritual or cultural ceremony.

SECTION D. Smoking Prohibitions:

- Subd. 1. Smoking Prohibited.** Except as provided in Subd. 2, smoking is prohibited in the following locations:
- A. Public places and places of work;
 - B. Outdoor dining or bar areas, including sidewalk seating, of any food establishments that provide wait staff or any other staff services to patrons in those areas; and
 - C. Within fifteen (15) feet of entrances, exits, open windows, and ventilation intakes of public places and places of work, to help prevent tobacco smoke from entering public places and places of work and to protect individuals entering such places from being exposed involuntarily to secondhand smoke.

Subd. 2. Exceptions. The prohibitions of this Section do not apply to the following places or situations:

- A. Private residences;
- B. Motor vehicles in private use;
- C. Motor vehicles that serve as a place of work for no more than one employee;
- D. The use of tobacco by an enrolled member of a federally-recognized Indian tribe as part of a traditional Indian spiritual or cultural ceremony;
- E. Twenty (20) percent of the guest rooms offered as sleeping accommodations to guests in hotels, motels, or similar lodging places, provided that:
 - 1) All smoking-permitted guest rooms on the same floor of a hotel, motel, or similar lodging place are contiguous; and
 - 2) All smoking-permitted guest rooms are clearly marked as “smoking permitted” on, or next to, entrances to each room; and
- F. Situations where members of the public are passing through on an outdoor street, alley, or sidewalk where smoking is prohibited by this Ordinance while en route to another location.

SECTION E. Responsibilities of Proprietors or Other Person in Charge:

The proprietor or other person in charge of a public place or place of work where smoking is prohibited:

- Subd. 1.** Shall conspicuously post a sign at all entrances to the public place or place of work stating: “This entire area is smoke-free.” The sign shall include the universal “no smoking” symbol. All signs and symbols required by this Ordinance shall be located, and the lettering sized to be readable, consistent with the Minnesota Clean Indoor Air Act, Minnesota Statutes, Sections 144. 411 to 144.417, and Minnesota Clean Indoor Air Act Rules, Parts 4620.0100 to 4620.1450, as amended from time to time;
- Subd. 2.** Shall ensure that no ashtrays, lighters, matchbooks, or other smoking paraphernalia are provided in areas where smoking is prohibited;
- Subd. 3.** Shall ask any person who smokes in an area where smoking is prohibited to refrain from smoking. If the person does not refrain from smoking after being asked to do so, the proprietor or other person in charge shall ask the person to leave. If the offending party refuses to leave, the proprietor or other person in charge shall handle the situation consistent with lawful methods for handling other persons acting in a disorderly manner or as a trespasser.
- Subd. 4.** May place receptacles outdoors for persons that are entering the place of work or public place to deposit their extinguished cigarettes, cigars, and other smoking materials. Such receptacles shall be located at a place and distance that a) does not encourage smoking within 15 feet of the exits, open windows, and ventilation intakes of places of work and public places; and b) reduces the risk that tobacco smoke and associated odors will enter such openings to the building.

SECTION F: Private Prohibitions:

Nothing in this Ordinance prevents the proprietor or other person in charge of any place, including, without limitation, any residence, motor vehicle, hotel, motel, or other lodging place, or any outdoor space, from prohibiting or further restricting smoking in any such place.

SECTION G: Retaliation Prohibited:

No person or employer shall discharge, refuse to hire, refuse to serve, penalize, discriminate against, or in any manner retaliate against any employee, applicant for employment, or customer because the employee, applicant, or customer exercises any right to a smoke-free environment afforded by this Ordinance or other law.

SECTION H: Employees' Rights Preserved:

An employee who consents to work in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

SECTION I: Other Applicable Laws:

This Ordinance is intended to complement the Minnesota Clean Indoor Air Act, Minnesota Statutes, Sections 144.411 to 144.417, as amended from time to time. Nothing in this Ordinance authorizes smoking in any location where smoking is prohibited or restricted by other laws.

SECTION J: Violations and Penalties:

Subd. 1. Smoking Where Prohibited. It is a violation of this Ordinance for any person to smoke in an area where smoking is prohibited by this Ordinance.

Subd. 2. Proprietor or Other Person in Charge. It is a violation of this Ordinance for the proprietor or other person in charge of any premises subject to this Ordinance to fail to comply with the requirements of Section E of this Ordinance or to retaliate against an employee, applicant for employment or customer, as prohibited by Section G of this Ordinance.

Subd. 3. Penalties.

- A. Consistent with Minnesota Statutes, Sections 375.53 and 609.02, a violation of this Ordinance shall be a petty misdemeanor for the first offense; any additional violation of any provision of this Ordinance shall be a misdemeanor. Each day of violation constitutes a separate offense.
- B. Failure to comply with any provision of this Ordinance shall constitute grounds for the denial, refusal to renew, suspension, or revocation of any food, liquor, or other business license issued by the County or a municipality within the County.

Subd. 4. Enforcement. Administration of this Ordinance, including guidance for and challenges to this Ordinance, shall be according to the authorities provided in Minnesota Statutes, other applicable Minnesota law, and the Olmsted County Environmental Services Administrative Ordinance.

Subd. 5. Injunctive Relief. In addition to the penalties provided in Subsection 3 of this Section, a municipal attorney or the County Attorney may bring a civil action against the proprietor or other person in charge of a public place or place of work to enjoin repeated or continuing violations of this Ordinance.

SECTION K. Severability and Savings Clause.

If any section or portion of this Ordinance is found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that section or portion shall be considered severable and the finding shall not serve as invalidation, or affect the validity or enforceability of any other section or provision of this Ordinance.

SECTION L. Effective Date.

The provisions of this Ordinance shall be in full force and effect after publication, and shall be enforceable on and after June 1, 2007.

Dated: January 23, 2007

BOARD OF COUNTY COMMISSIONERS

James V. Bier, Chairperson

ATTEST:

Richard G. Devlin, Clerk-Administrator